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FEDERAL COMMUNICATIONS COMMISSION
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January 4, 2001

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The Honorable William E. Kennard
Chairman
Federal Communications Commission
Room A302
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 96-98

Dear Chairman Kennard:

Over the past year, the Commission has been evaluating under what circumstances incumbent local exchange carriers ("ILECs") must offer unbundled local switching ("ULS") to competitors seeking to enter local markets. The purpose of this letter is to explain why many facilities-based CLECs support broader availability of ULS as an unbundled network element. We the undersigned facilities-based entrants[1] believe that reasonable access to unbundled local switching provides an important complement to a facilities-based carrier's entry strategy and we urge the Commission to reject pending efforts to unreasonably restrict the availability of ULS.

Unbundled local switching complements a facilities-based strategy by enabling an entrant to offer a more complete product line, extending service to a far broader base of customers than can efficiently be served over the entrant's facilities. Many customers still purchase analog

1 The signatories to this letter offer service to some portion of their customer base using switches they own.

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services and will continue to do so for the foreseeable future.[2] It is important that facilities-based CLECs be able to serve these customers, as well as those customers in a position to obtain digital service on our networks. Customers are not one-dimensional – even customers with digital needs may have ancillary lines that are better served through analog connections and ULS.[3] CLECs must be able to profitably serve a
broad range of customers if they are to be able to compete with ILECs that have, in effect, unrestricted access to "unbundled" local switching for *all* customers. In the final analysis, it is the revenues and profits from the full range of services – including conventional voice services to smaller business customers – that will restore investor confidence and fund the capital investments needed to establish a truly competitive local market.

Moreover, access to unbundled local switching permits facilities-based carriers to establish a broader market footprint so that they may better leverage advertising expenditures, as well as more comprehensively meet the needs of multi-location customers.[4] Additionally, access to unbundled local switching permits an entrant to initially focus its scare resources on developing the customer-care functions needed to provide high quality services. These

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2 The PACE Coalition has shown that approximately 94% of switched access lines served by RBOCs are analog. *See* Letter from Genevieve Morelli to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, July 19, 2000.

3 It is important to note that whatever restriction on the availability of ULS is ultimately adopted, it is critical that this restriction be implemented in a manner that would enable these ancillary lines to be served using ULS. The simplest restriction would prohibit DS-1 loops from being connected to unbundled local switching in the top 50 MSAs. A restriction drafted in this manner would mean that a customer's *digital* service could only be provided through an entrant's own switching facility, while the entrant could still serve ancillary *analog* lines using ULS. Alternatively, the Commission could implement the line-restriction on a CLEC-by-CLEC basis – that is, a customer with 27 lines could be served by a CLEC-provided DS-1 (24 circuits), yet unbundled local switching would remain available for the remaining 3 lines that fell below the restriction.

4 Many business customers have multiple premises, only some of which, due to location or size, can be economically served by an entrant's facilities. Access to unbundled local switching makes it possible for entrants to compete for these customers by creating a larger footprint to serve multiple locations. The ILECs – Verizon and SBC in particular – have positioned themselves to serve multi-location customers by merging with other ILECs. Small CLECs, however, have no ability to establish a similar geographic reach other than by relying on these same merged networks, albeit accessed as unbundled network elements.

customer-care functions represent a significant threshold investment, but are absolutely critical for laying the proper foundation for a successful firm.[5]

Just as the above explains why ULS provides a useful complement to our facilities deployment strategies, we are equally convinced that its expanded availability will not jeopardize our investments to date, or lessen our incentives to continue to invest in the future.[6] As noted above, unbundled local switching is useful to meet the analog needs of customers that are either too small – or too distant – to justify the capital expenditures needed to serve them through competitive local facilities. Where our facilities are available and the customer's needs sufficient, however, we enjoy an advantage not seriously challenged by unbundled local switching. For those customers desiring integrated services – i.e., voice and data combined into a single digital connection – unbundled local switching is no alternative at all. In our view, the relevant threat to local competition is the continued dominance by incumbents – incumbents that, through merger and acquisition, are larger today than when the 1996 Act was passed, and that still control approximately 93% of the market[7] -- not entry and competition from fellow CLECs.

Sincerely,

Greg Lawhon
SVP & General Counsel
Birch Telecom, Inc.

Andrew M. Walker
President & CEO
ITC^DeltaCom

5 The Commission is well aware of the difficulties and costs experienced by ILECs working to establish the necessary OSS to *provision* network elements. Equally critical – and, in relative terms, far more expensive – has been the investment necessary for CLECs to *obtain* network elements and support their retail businesses.

6 To the contrary, as we have explained above, access to unbundled local switching will make our companies stronger, enhancing our ability to attract capital as well eliminating operating losses more quickly. The sooner our companies can reach profitability, the sooner we may reinvest these earnings in our networks, thereby reducing our dependency on capital markets for growth.

7 *See* Local Telephone Competition, Status as of June 30, 2000, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, December 2000.

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